

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9626 of 1993

with

SPECIAL CIVIL APPLICATION No 9722 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed :
to see the judgements? Yes.
 2. To be referred to the Reporter or not?
Yes.
 3. Whether Their Lordships wish to see the fair copy
of the judgement? No.
 4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? Yes.
 5. Whether it is to be circulated to the Civil Judge? :
Yes.

RELIANCE INDUSTRIES LTD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9626 of 1993
MR KS NANAVALI for Petitioners
MR. JM THAKORE ADVOCATE GENERAL
WITH MS HARSHA DEWANI, AGP for Respondent No.1 & 2.
MR MD PANDYA for Respondent No. 3
RULE SERVED for Respondent No. 4
MR SN SHELAT for Respondent No. 5

2. Special Civil ApplicationNo 9722 of 1993

MR KS NANAVATI for Petitioners
MR JM THAKORE ADVOCATE GENERAL
WITH MS HARSHA DEWANI AGP for Respondent No.1 & 2
RULE SERVED BY DS for Respondent No. 3
RULE SERVED for Respondent No. 4
MR SN SHELAT for Respondent No. 5

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-22/08/2000

ORAL JUDGEMENT

In both these petitions parties are same and common issues are involved and hence both these petitions are tagged with each other and are being disposed of by this common judgment.

2. Spl. C.A. No. 9722/93 has been filed for quashing the scrutiny fee, security deposit and premium. Whereas Spl.C.A. No. 9626/93 has been filed for quashing the development charges imposed and levied by the respondents on the petitioners. Reliance Petrochemicals Ltd. is a Corporate Company of the petitioner no. 1. The land situated in Hazira was a low lying marshy land subject to tidal inundation and natural floods and after construction of Ukai dam the low lying area came up above the high water mark. However, the lands were saline and marshy and unsuitable for agriculture and therefore were lying waste and unutilized. A High Power Committee appointed by the Central Government selected Hazira as the place for development for utilization of Bombay High Gas and Hazira was selected as shore point for the costal gas pipeline. On this Project Report the State of Gujarat took a decision to create development facilities for industrial development of Hazira area. They invited industrialists to set up their units at Hazira. The Gujarat Industrial Development Corporation (GIDC) was appointed as the Operating Agency. For this purpose of preparing blue print for development of the area. Government of Gujarat made representations to the industrialists that all administrative and executive sanctions would be smoothly granted and there would be no bureaucratic interference and hindrances in setting up the industrial units. The units proposed to be set up in Hazira area were also assured that they will not be subject to the property taxes by the local authorities for the specified period. On the assurance of the State Government the petitioner decided to set up Petrochemicals complex at Hazira. On 17th October, 1985 the Government of Gujarat issued a

notification through its Urban Development and Urban Housing Department, declaring the area mentioned in the said Notification as Hazira development area and constituted Hajira Area Development Authority for the state development area. They will be referred to as HADA. The notification includes area of eight villages of Chorasi Taluka of Surat District and HADA was constituted as an authority for that purpose by the said notification dated 7-10-1985. The authority acquired the land and were allotted to the various industries. GIDC acquired the lands for the petitioners and the petitioners were allotted approximately about 285 hectares of lands in three instalments between 1986 to 1990. The first allotment was made of 122 hectares on 8-10-1986 and the possession was handed over to the petitioners by GIDC. An area of 152 hectares was allotted and handed over to the petitioners some times on or about 7-6-1989 by the GIDC and a small portion thereafter in third instalment. The lease documents have been executed for the three allotments between the petitioners and GIDC. The entire piece of land was marshy low lying saline lands. It was unfit for any purpose whatsoever including agriculture or construction of any building. The petitioners have spent approximately about Rs.35 crores in levelling the land allotted to them for a building site and for setting up their Petrochemicals units. On 20-12-1988 the petitioners applied to the Deputy Executive Engineer (Road and Buildings) Surat, Division No. 1 of GIDC for permission to construct the boundary wall. The said Engineer granted such permission on 21-12-1988. When the construction of the wall started the Sarpanch of village Mora objected to the petitioners' construction by the letter dated 8-2-1989 as the project was falling in the territorial limits of village Panchayat Mora. The petitioners were asked to obtain permission from the village Panchayat. Hence, the petitioners applied on 3-3-1989 to the Sarpanch, Mora Gram Panchayat for permission. The Mora Gram Panchayat granted the permission by the letter dated 12-5-1989 for construction of the boundary wall. The petitioners prepared development plans with all requisite details as required for the construction of the industrial units for phase no. 1 of their Petrochemical Complex and sent them through the GIDC to the HADA for approval and grant of necessary permission. HADA by its letter dated 20-3-1989 informed the petitioner Company that the question of granting development permission to the petitioners did not arise since the draft development plan as contemplated under Section 9 of the Act had not been published by the respondents as yet. The petitioners

applied to the Village Panchayat of Mora village for permission of their industrial construction of phase no. 1 of Petrochemical Complex under the provisions of the Gujarat Panchayats Act, 1961. Mora Village Panchayat by its letter dated 17-6-1989 granted permission accordingly. The petitioners started construction and have completed the phase - I project in accordance plans sanctioned by the Village Panchayat, Mora under the provisions of Gujarat Panchayat Act, 1961 for non-agriculture use.

3. The notification was published by the Government of Gujarat on 21-8-1989 and that draft development plan was published under the provisions of Sections 9 and 13 of Gujarat Town Planning and Urban Development Act, 1976 which will be hereinafter referred to as the Act. It was in II Column, one containing the plan and second containing General Development Control Regulations. On 21-8-1989 the notices were issued in the newspaper inviting objections and suggestions to the draft development plan and the General Development Control Regulation Published by the State Government prepared by HADA. Relevant provisions of the Draft Development Plan and General Development Control Regulation published by the authority relating to scrutiny fee, security deposit and premium, which reads as under :

(a) Part III of the Draft Development Plan
and Development Control Regulations 1989
prescribe the procedure for securing
development permission.

(b) Rule 3.3 prescribe that any person
applying for development permission shall
have to pay scrutiny fee at the rate
prescribed therein which is Rs. 1 per
sq. meter of built up area and Ps. 50
per sq. meter of plot area for
residential uses and double the above
rates for other rates.

Rule 3.3 reads as under :

"3.3 Scrutiny fee :- A person applying
for a permission for carrying out any development
work on any land shall with his application pay
to the Authority scrutiny fees at the following
rates :

(i) Rs.1/- per sq. mt. of built up area of
all floors of the intended development or

part thereof and 50 paise per sq. met. of plot area of the building unit subject to minimum of Rs.300/- (Rupees Three Hundred only) for residential uses and double the above rate for the uses other than residential except for development for hospital, dispensary, school or college or a place of worship to be constructed by public charitable trust, registered under Public Trust Act, 1950.

(ii) For revalidation of lapsed development permission Rs.300/- (Rupees Three Hundred only) for application with prescribed time limit & Rs.50/- (Rupees Fifty only) as penalty per month beyond prescribed time limit and for revision of development permission Rs.50/- (Rupees Fifty only).

(iii) In case of mining, quarrying and brick kiln operations the fees will be as under:

(a) Mining, quarrying and Rs.500/- per 0.4 Hect. brick kiln operations or part thereof and a maximum of Rs.2500/.

(b) brick - kiln, Rs.25/- per 0.1 Hect. (without chimney) or part thereof and a maximum of Rs.500/-.

(c) Processing of Sagol Rs.25/- per 0.1 Hect. line etc. without or part thereof and a construction. maximum of Rs.250/-.

(d) Renewal of Mining, Rs.50/- for one year quarrying brick kiln operations

(e) brick-kiln Rs.25/- for one year. (without chimney)

(f) Processing of Sagol, Rs.10/- for one year. line etc. without construction.

(c) Rule 5.3 provides for Security Deposit;

B. Regulation 5.3 provides for Security Deposit :-

"5.3 The applicant shall deposit and keep deposited as security deposit an amount at the rates mentioned below for the due observance and performance of the conditions of the Development Permission. The amount shall be deposited on intimation before issue of "Development Permission".

(i) Rs.3/- (Rupees Three only per sq. mts. of total built-up area of all floors of the proposed development (construction).

(ii) The amount of security deposit shall be paid in cash only.

(iii) Government, semi-Government, local authorities and public charitable trusts registered under the Public Trusts Act, 1950 are exempted from this provision.

(iv) These rates are liable to be revised every two years from the date on which these rates come into force.

(v) The security deposit shall be refunded without interest after grant of the occupancy certificate.

(vi) The security deposit shall be forfeited either in whole or in part at the absolute discretion of the Authority for breach of any of the provisions of these regulations and conditions of the development permission. Such forfeiture shall be without prejudice to any other remedy or right of the Authority."

5.5 Notwithstanding any development permission granted under the Act and these regulations, any person undertaking any development work shall continue to be wholly and solely liable for any injury or damage or loss whatsoever that may be caused to any one in or around the area during such construction and no liability whatsoever in this regard shall be on the authority."

D. Regulation 5.7 and 5.8 prescribe for deviation from development permission during construction and the levy of premium for such deviation.

Regulation 5.7 and 5.8 are extracted as under:

"5.7 Deviations during construction : If during carrying out of development, any departure of a substantial nature from the approved plan is intended to be made, the revised plan showing the deviations shall be submitted and the procedure laid down for the original proposal shall apply mutatis mutandis. No deviation or departure from the approved plan shall be made without proper permission from the concerned authority.

5.8 Development though in accordance with the General Development Regulations with the General Development Regulations but without prior permission or in deviation of the granted development permission.

In case where development has already been started or completed on any site on or after .8.1989 and for which Development permission in writing of the Authority is not obtained, but where this development on a site may be in accordance with the provisions of these Regulations, the "development permission" may be granted by the competent authority on the merits of such case. For such developments works over and above such other charges/fees as may be otherwise leviable premium shall be charged as per following rates :

Sr. Type of development Rate of premium as % of
the cost of development
carried out :

For For
residential development
development other than
residential.

1. Development in accordance 1.0% 2.0%
with General Development
Control Regulations
started before obtaining
written permission
though applied.

2. Development though in 1.5% 3.0%

accordance with the
development Control
Regulations Control
Regulations, but not
applied for.

3. Development though in 2.0% 4.0%
accordance with the General
Development Control
Regulations, but in
deviation of the granted
development permission.

4. Brick kiln, Mining 25 paise sq.mt. or
quarrying and all other portion of land in
which development
is made or has
started.

NOTE :

1. For Residential Development minimum permission
will Rs.250/-.
2. For Development other than Residential minimum
premium will be Rs.1000/-.
3. For Charitable trust relaxation in premium shall
be made by Chief Executive Authority taking into
consideration its merits purpose of trust, type of
development etc. after recording reasons
thereof.
4. Norms for assessing cost of development carried
out for different type of constructions shall be,
as may be prescribed by the Authority from time
to time."

D Regulation 5.9 provides that if the permission
has already been granted before the publication
of the draft plan by the competent authority,
i.e., the local Authority under the relevant law
for the time being in force, nonetheless the
permission will be required of the Authority.
The said Regulation 5.9, reproduced as under :

"5.9 Development though in accordance with the
applicable Government orders/Building

Regulations/Bye-laws/Rules etc. but without prior permission or in deviation of the granted permission.

In the case, where development had already been started and completed on any site prior to for which necessary permission in writing of the concerned competent authority at the relevant time was not then obtained but where this development made on site is in accordance with the relevant rules, building regulations, byelaws etc. as framed by the local authority or the Government orders as in force at the relevant time, the "development permission" for such works on site without prerequisite permission or development though in accordance with the relevant rules, building regulations, byelaws, Government order as in force at the relevant time, but in deviation of the granted permission can be granted by the competent authority on merits of the each cases; for such development works, over and above such charges/ from as may be otherwise leviable, premium shall be charged as per rates prescribed under Regulation 5.8.

Provided, however, that no such permission shall be given in respect of developments which are in violation of the development plan and town planning scheme proposal as in force."

4. The petitioners and other industrialists and interested persons made objections against levy of scrutiny fee, security deposit and premium, which will be narrated at the relevant place.

5. Regarding development charge some meeting was held by the officials of HADA on 18-9-1989 wherein the proposal was made for levy and imposition of development charges. Notification was published u/s 99 of the Act proposing levy and imposition of development charge at the rates specified for different users on 29-9-1989. Notifications were published on 30-9-1989 and 1-10-1989 in the newspaper inviting the objections to the proposal of levy and imposition of development charges as proposed by HADA. Number of times between October 1989 and August 1990 the meetings were held between the representatives of the petitioners and the officers of HADA in which the proposal of development charges and also the development plans were discussed. The petitioners have lodged their protest and objections regarding levy and imposition of

development charges. In the month of August 1990 HADA's officers gave hearing to the persons who had lodged objections and proposals in respect of the development charges as published in the notification dated 29-9-1989. The Southern Gujarat Chamber of Commerce also raised objections to the proposal of levy and imposition of development charges in the month of August, 1990. In the meeting held on 24-3-91 it was decided to submit proposal of the development charges to the State Government for its approval and accordingly it was submitted by their letter dated 25-4-1991. On 21-12-1991 the State of Gujarat addressed a letter to HADA through its Urban Development and Urban Housing Department purporting to approve their proposal of development charges as submitted. In the meeting held on 31-1-1992 it was decided to implement levy and imposition of development charges and on 4-2-1992 a notification was published in the official gazette notifying levying of development charges as proposed in the notification dated 29-9-1989 without any modification therein. On 31-1-1992 HADA in its meeting decided to implement levy and imposition of development charge. Accordingly, on 4-2-1992, a notification was published in the official gazette notifying levy of development charges as proposed in the initial notification dated 29-9-1989.

6. On 16-10-1989 HADA issued a Circular to all industries in their area indicating that prior development permission was compulsory for the development and the development without permission would be illegal. On 21-12-1989 the Chief Executive Officer of HADA, called upon the petitioners to stop the construction of their project Phase - 1 which he termed as unauthorized construction and asked the petitioners to remain present at their office on 1-1-1990. On 4-1-1990 the Chief Executive Officer again addressed a letter to the petitioners calling upon them to stop the construction of their phase-I project which was termed by him as unauthorized and asking the petitioner to remain present on 15-1-1990. By the letter dated 11-1-1990 the petitioners submitted a complete list of their construction activity of Phase-I and its basic drawings to HADA. The petitioners also pointed out that the work of phase-I was in progress in accordance with the plans sanctioned by the Village Panchayat, Mora under the provisions of the Gujarat Panchayat Act. On 15-2-1990 the petitioners were again directed to submit fresh plans in the prescribed proforma duly signed by the Architect approved by the HADA. The demand for scrutiny fee was also made under the proposal of the General Development Control Regulations. All the details required by the

Chief Executive Officer of HADA were furnished by the petitioners by the letter dated 17-2-1990. The Secretary, Hazira Area Industries Association sent a letter dated 28-2-1990 to HADA protesting about the exorbitant scrutiny fee. The Chief Executive Office of HADA replied that the payment of scrutiny fee was a statutory requirement. The President, Hazira Area Industries Association sent another letter dated 14-4-1990 to the Minister, Urban Development and Urban Housing Development regarding scrutiny fees and other proposals in the development plan. The Chief Executive Officer of HADA issued the letter dated 18-4-1990 to all the industries asking to pay scrutiny fees as development without permission would be illegal. The Chief Executive Officer HADA issued a Circular dated 13-6-1990 to all the industries including the petitioners requiring to take development permission from HADA. The petitioners gave reply by the letter dated 23-7-1990 that HADA could not be the competent authority to grant permission for construction which has already been commenced before draft development plan was even published. HADA again sent letter dated 24-10-1990 requiring the petitioners to submit their plan for approval or face demolition proceedings regarding the construction already made. The petitioners replied by the letter dated 6-11-1990 and explained that the permission was not necessary. HADA again sent the letter to the petitioners requiring them to produce nonagricultural permission and approved the plans within seven days. Permission for nonagricultural purpose was not required if the land is used for industrial purpose and the plans were duly approved by the competent authority - Mora Village Panchayat. As the authorities were making constant demand of scrutiny fee etc. the petitioners made payment of Rs. 4 lakhs under protest. The HADA asked the petitioners by the letter dated 10-4-1991 to pay full scrutiny fee as leviable under the Draft Development Regulations. On 22-4-1991, the petitioners submitted a detailed layout plan to HADA and pointed out that N.A. permission was not necessary in view of the Government Circular to that effect in respect of the lands acquired for industrial purposes specifically. HADA issued a notice dated 23-8-1991 to the petitioners u/s 29 (5) and u/s 36 of the Act, to restore the land to its original position within 7 days, failing which the construction of the industrial unit will be demolished. The petitioners pointed out that the scrutiny fee is unreasonable and unsustainable and threat of demolition was illegal and not maintainable by the letters dated 4-9-1991 and 20-9-1991. The Chief Executive Officer sent another letter dated 8-1-1992 u/s 29 of the Act for alleged violation of Section 27 of the

Act. The petitioners again replied the same. The petitioners also by the letter dated 20-1-1992 submitted plans to HADA for approval only in respect of the project activity for which Gram Panchayat permission was not previously obtained. HADA raised various queries and required the petitioners to comply with the same. The petitioners again sent a letter dated 30-3-1992 to HADA pointing out that threat given to the petitioners for demolition of petitioners' buildings was uncalled for as the petitioners have already obtained permission from Village Panchayat for construction of Phase - I and the petitioners had applied for permission to HADA which was not granted as there was no draft development plan in existence at the relevant time. Accordingly, the petitioners were required by the letter dated 27-4-1992 of the HADA for compliance of the queries raised by the HADA in the letter dated 24-2-1992 as well as 7-3-1992 including the matters relating to payment of scrutiny fees, security deposit etc. HADA issued the notice dated 1-7-1992 to the petitioners for sum of Rs.8.19 crore on account of security deposit, scrutiny fees and development charges in respect of the entire lands of the petitioners as well as the construction undertaken and the construction underway. It was also threatened that if such demands are not complied with the respondents would take action u/s 36 of the Act. The petitioners complied with all the queries raised by the respondent in the letter dated 7-3-1992 in respect of the planning permission which the petitioner had sought for the balance in phase-I project. The petitioners also supplied additional information on 21-9-1991 and the application of the petitioners was rejected on 6-10-1992. It appears that the said rejection is on the ground of nonpayment of security deposit, scrutiny fees and development charges. HADA again sent the notice on 25.2.93/9.3.93 u/s 36 of the Act demanding the amount under various heads otherwise to take coercive action for demolition of petitioners's construction by HADA and demanded Rs.8,15,89,931/- and out of this amount a sum of Rs.3,38,12,420/- was towards the development charges and remaining towards scrutiny fees and security deposit.

7. On 4-3-1993 HADA filed a Regular Civil Suit for declaration and injunction that the petitioners' construction was not in accordance with law and the same is liable to be demolished and for demolition of the present construction and required the petitioners to take development permission for the proposed construction. The application for interim relief was also filed and the Court passed the order directing the parties to maintain status-quo. The petitioners filed their written

statement on 15-3-1993 along with the injunction application against the authority restraining the authority from taking any steps for demolition of the petitioners' structure. Counter affidavit was filed by the authority concerned. By the order dated 25-5-1993 2nd Jt. Civil Judge (SD), Surat passed the orders and the petitioners were restrained from making any further construction without obtaining necessary permission from the authority and the petitioners' application for interim relief was granted on 11-6-1993. The petitioners filed stay application and the Court passed an order staying of the interim order till the appeal is filed by the petitioners and the plaintiff was restrained from demolishing the suit construction till the appeal is filed by the defendants - petitioners. The petitioners filed the appeal on 2-7-1993 before the District Court, Surat against the order dated 25-5-1993 and also applied for stay of the order dated 25-5-1993 of the trial Judge. On 29-7-1993 the authority filed cross objections in the appeal. Under these circumstances, the petitioners challenged imposition of scrutiny fees, development charges, security deposit and premium as prescribed under the Regulation. The petitioners also challenged validity, legality and propriety of the development charges proposed to be demanded u/s 29 of the Act.

8. The petition being Spl. C.A. No. 9722 of 1993 has been filed challenging validity, legality and propriety of scrutiny fees, premium and security deposit. It is stated that the petitioners have obtained necessary permissions from various statutory authorities for setting up Petrochemical Complex as an industrialist and the petitioners have incurred approximately Rs.1800 crores for setting up phase-I Unit. Demand of scrutiny fees, security deposit and premium is illegal and without any authority of law.

9. It is further stated that the petitioners have obtained permissions from Village Panchayat under the provisions of the Gujarat Panchayats Act, 1961 and those permissions were obtained even before draft development plan was published. At the relevant time no permission of the authority was required. As such, demand of Rs.8,15,89,931/towards scrutiny fees, security deposit, premium and development charges, out of which amount of Rs.3,38,12,420/- is towards development charges is illegal and not sustainable in law. Thus, the amount of Rs.4,77,77,521/- was demanded on account of scrutiny fee, security deposit and premium. Those demands made by the notices dated 1-7-1992, 17-7-1992 and 25-2-93/9-3-1993, are illgal and without authority of law.

10. The petitioners have challenged demand notices and made prayers as under :

- "(a) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari, under Article 226 of the Constitution of India calling for the papers and proceedings pertaining to the promulgation of the Draft Development Plan and the General Development Control Regulations by the respondent Authority published by a Notification issued by the respondent Authority on 21st August 1989 and after examining the validity , legality and propriety of the impugned regulations, namely, Regulations 3.3, 5.3, 5.5, 5.7, 5.8 and 5.9 imposing the levy of security deposit, scrutiny fee and premium and the impugned demands on that account and the same be quashed and set aside.
- (b) that this Hon'ble Court be pleased to declare the draft development plan and the general development control Regulations published by the respondent Authority on 21st August 1989 in so far as they purport to provide imposition of levy of security deposit, premium and scrutiny fee under Regulations 3.3, 5.3, 5.5, 5.7, 5.8 and 5.9 as unconstitutional and ultra vires.
- (c) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction under Article 226 of the Constitution of India directing the respondents;
- (i) to forthwith cancel and/or withdraw the impugned draft development plan and General Development Control Regulations published on 21st August 1989 in so far as they purport to provide for the levy of security deposit, premium and scrutiny fee under Regulations 3.3, 5.3, 5.5, 5.7, 5.8 and 5.9 as unconstitutional and ultra vires.
- (ii) To forbear, refrain from levying, imposing and/or collecting from the petitioners security deposit, premium and scrutiny fee under the impugned draft development plan and the general development control Regulations published by the Respondent authority on 21st

August, 1989 in so far as they purport to provide for the levy of security deposit, premium and scrutiny fee under Regulations 3.3, 5.3, 5.5, 5.7, 5.8 and 5.9 or in any manner whatsoever.

(d) that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction under Article 226 of the Constitution of India directing the respondents :

(i) to forthwith cancel and/or withdraw the impugned demand notices on account of scrutiny fee, security deposit and premium under Regulations 3.3, 5.3, 5.5., 5.7, 5.8 and 5.9;

(ii) to restrain the respondent authority either by themselves, their servants and agents or subordinates from in any manner taking any steps against the petitioners coercive or otherwise for recovery of impugned demands on account of scrutiny fee, security deposit and premium under Regulations 3.3, 5.3, 5.5, 5.7, 5.8 and 5.9 as demanded under the impugned demand notices or otherwise.

11. The prayer made in the petition being Spl. C.A. No. 9626 of 1993 is reproduced, as under :

(a) That this court be pleased to issue writ of certiorari, under Article 226 of the Constitution of India calling for the papers and proceedings pertaining to the Notification dated 4th February, 1992 issued by the Respondents u/s 99 of the Gujarat Town Planning and Urban Development Act, 1976 and purported demand notices dated 1-7-92, 17-7-92, 25-2-93/9-3-93 in so far they pertain to the demand on account of development charges and after examining the validity, legality and propriety thereof be pleased to quash and set aside the same.

(b) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the respondents;

- (i) to forthwith cancel and/or withdraw the impugned Notification issued by the Respondents u/s 99 of the Gujarat Town Planning and Urban Development Act, 1979 dated 4th February 1992 and the demand notices issued upon the petitioners for levy of development charges.
- (ii) to forbear, restrain from levy, imposition and collection of development charges from the petitioners either pursuant to the aforesaid Notification and the demand notices or in any other manner whatsoever.
- (iii) to perform and forbear from in any manner interfering with or obstructing with the implementation of the petitioners' Petro Chemical Project either under the basis of impugned Notification for levy of development charges or the impugned notices based thereupon or in any other manner whatsoever.

12. Heard the learned counsel for the parties at length and perused the relevant papers on record of this case.

13. Mr. K.S. Nanavati, learned counsel for the petitioners submitted that the concerned officers of the State Government approached the petitioners and other industrialists invited and requested them to set up their industrial units at the earliest and they assured the petitioners and other industrialists that no bureaucrats will interfere or make any hindrance in their development work, all administrative and executive sanctions would be smoothly granted without any difficulty they will be given every facility in setting up their projects and they will not be required to obtain any N.A. permission, they will not be subject to property tax by local authority for a certain period. On the assurance of government officials, the petitioners started development work of their industrial units on the land allotted to them. But the industrialists including the petitioners were not aware of the mischievous plan of the State Government officers that they were spreading grains to catch birds by nets. They contacted and invited the industrialists including the petitioners under the pretext to make the State of Gujarat more developed in industrial sphere by installing their industries. The land which was given to them was saline marshy, waste and

unsuitable even for agriculture purpose. The petitioners have extended more than Rs.35 crores in levelling the land and they have invested thousands crores of rupees in constructing the roads, in making different projects for electricity, discharge of affluent, sewerage etc. besides their own projects of the industries. The Area Development Authority or the State Authority has not incurred a single pie in constructing roads, supply of power, street light, supply of water, project of discharge of affluent and sewerage etc. for all amenities, the petitioners had to invest crores of rupees though the HADA was under obligation to make arrangement of all the facilities aforesaid. When they started to construct the boundary wall of first phase of project, village panchayat Mora restrained them from making any construction for want of their permission. They applied for permission to the Panchayat Authority. With great difficulty they could be able to obtain permission from Panchayat Authority and they also sought for permission from the HADA but the Authority replied them that they were unable to give any permission as there was no Regulations for that purpose nor there was any draft development plan into existence. When they were to complete first phase of the project, the HADA sent demand notices for Rs.8,15,89,931/- towards development charge, scrutiny fee, scrutiny fee and premium, out of this amount a sum of Rs.3,38,12,420/- was towards development charge. The petitioner and other companies completed their project by their own blood and sweat but the authorities under the guise of different fee and charge started to peel off their skins with the threat of demolition of their units. Due to arbitrariness, high handedness, illegal exaction of money in the pretext in the name of different fees is in the nature of taxes. We all of us know that thousands of companies, industries, textile mills, industrials units and various mills have already been locked and liquidated in the State of Gujarat itself. Had the petitioners been in aware of mischievous design of the Government officers and officers of HADA regarding arbitrariness, high handedness, illegal action in taxing them by way of different names of fee and charges, the petitioners and other companies would not have ready to set up their project and invested such huge amount in setting up their units in the HADA. The authority are taking out their intestines from their stomach by issuing the notices with threat of demolition of their units.

14. Now, I will consider the contentions raised on behalf of the parties in respect of development charge.

15. DEVELOPMENT CHARGE.

Mr. Nanavati learned counsel for the petitioners submitted that the provisions of Section 99 of the Act empowers the appropriate authority to levy development charge on land and building within the development area, with the previous approval of the State Government by notification, at such rate not exceeding the maximum rates specified in Section 100 of the Act and these rates are subject to the conditions that different rates of development charges may be specified for different part of the development area and different uses. Maximum rates have been prescribed for different uses under the provisions of Section 100 of the Act. The procedure for determination of development charge has been provided in Rule 50 of the Gujarat Town Planning and Urban Development Rules, 1979 (hereinafter referred to as the Rules, 1979 wherein the authority is required to publish notification in the official gazette and two news papers and on the notice board of the authority for levy of development charge u/s 99 of the Act showing the exact rates of development charge for different area and for different uses along with draft plan for approval of the State Government, draft proposal of levy of development charge is also required to show grounds and reasons for working out the various rates of development for different area and uses. HADA published the notification in the official gazette regarding draft development plan along with the proposed draft regulation and notice with the notice inviting suggestion/objection from the concerned persons on 21-8-1989 and submitted to the State Government for its necessary approval. The authority further submitted to the State Government, rates of development charges, rates of different purposes u/s 99 of the Act read with Rule 50 of the Rules in the official gazette on 29-9-1989 for its approval. Different rates of development charge have been approved as proposed without any modification by the State Government vide the notification in the official gazette issued by the State Government on 4-2-1992. While draft development plan along with the proposed regulations have been sanctioned by the State Government vide notification dated 7-5-1994 in the official gazette with effect from 8-6-1994.

16. Learned counsel for the petitioner emphatically contended that both the notifications dated 21-8-1989 and 29-9-1989 are illegal, arbitrary and violative of the procedure provided by the statutory provisions of law inasmuch as the none of the notifications have given out reasons or grounds for levying development charges required under Rule 50 of the

Rules and without any classification of rates of the development charge in respect of different areas and for different uses and flat rate of development charge has been published in the notification dated 29-9-1989 and the proposed regulation as required u/s 99 of the Act are illegal and against the provisions of law. The charges proposed without any reason and ground the maximum rates of the development charge which have been approved by the State Government in toto those rates are arbitrary, irrational, unreasonable and unsustainable in the eye of law. As against the procedure to be established directly by law, he also stressed if any procedure has been provided by the Statute, that procedure must directly be followed otherwise not. It is further submitted that different rates of development charge with retrospective effect are without any authority of law. Hence, they cannot be held liable for the payment of illegal development charge, levied by the authority concerned.

17. In the counter affidavit of the respondent authority, it is stated that development charge is neither tax nor fee. But during the course of the arguments the learned Advocate General submitted that the development charge cannot certainly be tax. It is only fee in the form of charge. He has contended that it is not necessary for levy of development charge that draft development plan must be approved by the State Government, then the development charge should be levied. For levy of development charge, final approval of the draft development plan is not necessary nor it has any concerned with the approval of the draft development charge. Development charge can be levied only after publication draft plan is sent to the State Government. Section 26 of the Act requires that after publication of draft development plan, every person will not carry out any development in the area unless certificate has been granted that he has paid development charge and scrutiny fee leviable or no development charge and scrutiny fee is required to be levied. U/s 49 of the Act, after publication of the draft scheme, no person will carry out any development unless the same person has applied and obtained permission on payment of scrutiny fee prescribed by the Regulations. U/s 99 of the Act, development charge on land or building is required to be levied after approval of the State Government by the notification in the official gazette. Different rates of development charge may be specified for different parts of development area and for different uses Section 100 of the Act prescribed maximum rates of development charge for different uses. Section 100 of the Act provides the theory whether any person has applied for permission of

development of land building or not, whether he intends to carry out any such development or has carried out of such development, he is required to apply for permission to the appropriate authority within a specified period thereof, for assessment of development charge payable in respect thereof. Development charge is levied to execute the works in connection with supply of water, disposal of sewerage and provision of other services and amenities as may be prescribed by Regulation as required u/s 7 (i) (vii) (vii-a) of the Act. In the counter affidavit affidavit, it has been clarified that the notification dated 29-9-1989 has specified the rates of development charge for different uses in accordance with the provisions of Section 100 of the Act. Thus, under the law the authority has not committed any error in levy of development charge.

18. I have carefully considered the rival contentions of the parties in this respect. Development charge is nothing but fee or charge for making development over the land or building in the development area as appears from the provisions of Section 26 and 27 of the Act. Now, the question is whether it can be determined to the maximum rate and which factors will effect its determination where a big zone of land has been declared by any authority for the distribution of plots for residential purposes, wherein roads in breadth of 100 feet, 60 feet, 30 feet are planned. Some portion of the land has been earmarked for public purpose i.e. children park or garden or place of general public importance etc. Some portion of land at different places are shown for commercial purposes i.e. shops etc. Though the facility of water supply, electric supply and sewerage is equally available to all the allottees even then the authority is entitled to charge higher rates for the allotment where the roads are in breadth of 100 feet, or 60 feet then the allottees to whom the road of breadth of 30 feet is available or where allottee is in interior portion where less facilities are available but where the allottee is in a position of enjoying more facility of ventilation etc. where the allottee is at corner where two or more roads cross. The plot is permitted to be used for shop or commercial purpose. The authority is entitled to charge the value of the plot at different rate. Thus, different rates may be prescribed by the authority according to the location, facility of ventilation, school, proximity of bus stop or other available facilities in the area, the entire zone for residential purpose if any flat rate is prescribed by such authority for the use of the entire land for use of one category without considering different part and different use

would be illegal. Similarly, in the present case, no doubt the land was allotted to the petitioners for the industrial purpose. But there are parts of the land for different uses i.e. open land, road, and road side land, land to be used for electric plant, sewerage, land used for affluent discharge plant, used for building for administrative or office work or land used for the residential purpose, for medical facilities and canteen of the employees etc. such part of the land cannot be equated with the land actually used for industrial unit where the machines have been installed. Where actual manufacturing process is conducted, pieces of land which is not being used exclusively for actual manufacturing process either should be exempted from development charge or the charge at the nominal rate should have been levied. The authority has not considered locations factors, such as proximity of railway station, port, national highway, jetties, supply of raw material and labour etc. which affect fluctuation of rate of development charge. The authority has not considered that any facility was provided to the petitioners. From the commencement of HADA authority till its dissolution, authority has prescribed the flat rate levied of development charge. Thus, the authority has not prescribed different rate of development charge for different parts of development area and for different uses. The flat rate for the entire land of industrial unit is against the provisions of Section 99 of the Act and hence is bad and not sustainable in the eye of law.

19. Further contention of the learned counsel for the petitioner is that levy of development charge is illegal and irrational inasmuch as the development charge is levied for execution of work in connection with supply of water, disposal of sewerage, provisions of other services and amenities as prescribed by the regulation, such as construction of roads, supply of electricity, street light etc. as enumerated in Section 7 (i), (vii), (vii) (a) of the Act. But these services and amenities are statutory functions of the authority for which the authority, municipality, or panchayat imposes variety of taxes. Moreover, the authority has not incurred a single pie for making any such provision of the facilities to the petitioners and the petitioners have to invest the huge amount for making them available. He relied on the decision of the Apex Court in the case "the Government of Andhra Pradesh & Another Vs. Hindustan Machine Tools Ltd. reported in 1975 (2) SCC, 274, wherein it has been held as under :

"One cannot take into account the sum total of

the activities of a public body like a Gram Panchayat to see justification for the fees imposed by it. The expenses incurred by a Gram Panchayat or a Municipality in discharging its obligatory functions are usually met by the imposition of variety of taxes. For justifying the imposition of fees the public authority has to show what services are rendered or intended to be rendered individually to the particular person on whom the fee is imposed. The Gram Panchayat here has not even prepared an estimate of what the intended services would cost it.

Learned counsel for the appellant

contended that the Gram Panchayat lays road for providing access to new buildings, that it provides for drainage and lights and that scrutinises the plans submitted for the intended constructions and, if necessary, it advises the applicants in order that the proposed construction may conform to the regulations. We are unable to accept that these services are rendered individually to the respondent. The laying of roads and drainage or supply of street lights are a statutory function of public authorities and it is difficult to hold, in the absence of any material, that any of such services as have been mentioned to us have in fact been rendered to the respondent. The very circumstance that the permission fee is levied at a certain percentage of the capital value of the buildings shows that the Gram Panchayat itself never intended to correlate the fee with the services rendered or intended to be rendered by it. There is, therefore, no warrant for the levy of permission fee, not even on factory building, assuming for the sake of argument that the permission of Gram Panchayat is necessary for the construction of factory building."

20. The contention of the learned advocate for the petitioners is that the procedure for assessment of development charge and its levy is violative of statutory provisions of law. Whenever any Statute requires anything to be done in a particular manner strictly in the same manner otherwise not at all. Sub-rule 4 of Rule 50 of the Rules, provides that the draft proposal to levy development charge shall show the grounds and reasons for working out the various rates of development charge for different areas and uses. He also invited my attention to the notification published in the

official gazette on 21-8-1989 u/s 99 of the Act read with Rule 50 of the Rules to show that no reasons and grounds have provided for working out the various rates of development charge for different areas and uses and submitted that the procedure adopted by the authority is violative of Statutory provisions, as such it is liable to be struck down as violative of the procedure provided by the Statute.

21. I have carefully examined this contention of the learned counsel for the petitioner. Learned Advocate General on behalf of the respondents could not contend that Gujarat Town Planning and Urban Development Rules framed u/s 110 of the Gujarat Town Planning and Development Act, 1976 (President's Act No. 27 of 1976) has no statutory force. I have examined not only the notification published in the official gazette on 21-8-1989 but also the notification published in the official gazette on 29-9-1989 as both the notifications relating draft development plan supplementing to each other were published u/s 99 of the Act read with Rule 50 of the Rules.

22. Notification dated 21-8-1989 published in the official gazette which is in Gujarati language but it is reproduced in English version, which reads as under :

THE GUJARAT GOVERNMENT GAZETTE
SUPPLEMENT TO THE CENTRAL GAZETTE AND CENTRAL SECTION
PUBLISHED BY AUTHORITY.

Vol.XXX Monday, August, 21, 1989/Sravan 30 191 No.20

PART - II EXTRAORDINARY.

NOTICE.

HAJIRA AREA DEVELOPMENT AUTHORITY SURAT.

Gujarat, Town Planning and Urban Development Act, 1976

No. HADA/Technical/DP/253-1, whereas the Hazira Area Development Authority Surat prepared and submitted a Draft Development Plan described in the Schedule hereto annexed as Schedule-"A" for the area known as Hazira Development Area to the State Government under Section 9 of the Gujarat Town Planning and Urban Development Act, 1976.

Under Sub-Section (1) of Section 13 of the said

Act and under the Rules of Gujarat Town Planning & Urban Development Rules, 1979 the Draft Development Plan and particulars specified in Schedule - D will be kept open for public in the office of this Authority on all working day during office hours. Arrangements have also been made to explain the same in detail to members of the public.

Now, therefore, in pursuance of Sub-Section (1) of Section 13 of the said Act, the Authority hereby gives notices that any suggestions and objections which may be received from any person in writing with respect to the Draft Development Plan within a period of two months from the date of its publication in the official gazette shall be considered by the Authority, Applications of suggestions and objections should be submitted in two copies.

Surat 19th August, 1989,

Office :-

Hazira Area Development Authority

A-5, Multi-storied Building,
Nanpura, SURAT.

Chief Executive Officer,
Hazira Area Development Authority, Surat.

SCHEDULE - A.

DISTRICT ; SURAT.

Name of Town & Villages - Hazira Area Development
Authority Taluka Chorasi :- (1) Damka.

- (2) Bhatlai
- (3) Vasva
- (4) Rajgiri
- (5) Mora
- (6) Limla
- (7) Suvali
- (8) Hazira.

VIJAYA VYAS.

Chief Executive Officer
Hazira Area Development Authority.

SURAT.

SCHEDULE - B.

THE GUJARAT TOWN PLANNING AND URBAN DEVELOPMENT ACT 1976.

SECTION 13 (2).

- (a) A statement indicating broadly the uses to which lands in the area covered by the plan are proposed to be put and survey carried out for the preparation of the draft development plan.
- (b) Maps, Charts and statements explainig the provisions of the draft development plan.
- (c) The draft regulations for enforcing the provisions of the draft development plan.
- (d) Procedure explaining the manner in which permission for Development any land may be obtained from the Urban Development Authority or the case may be the Authorised officer.
- (e) A statement of the stages of development by which it is proposed to meet any obligation imposed on the Draft Development Plan.
- (f) An approximate estimate of the cost involved in acquisition of land reserved for public purpose.

VINAY VYAS

CHIEF EXECUTIVE OFFICER.

HAZIRA AREA DEVELOPMENT AUTHORITY,
SURAT.

Now, I also examine the notification dated 29-9-1989 of which English Version is reproduced as under:

THE GUJARAT GOVERNMENT

Supplement to the Central Gazette and Central Section
Vol. XXX Friday September 29, 1989. No.24.
Extra Ordinary.

HAZIRA AREA DEVELOPMENT AUTHORITY REGULATIONS.

As resolved by the Hajira Area Development Authority this Notification has been published u/s 99 and 100 of the Gujarat Town Planning and Urban Development

Act, 1976 and under Rule 50 of the Gujarat Town Planning and Urban Development Rules, 1979. As mentioned in the Schedule appended hereto, different areas of Hajira Area Development Authority for different uses, for the determination of proposed development charge on the basis of HADA, the particulars of sales/valuation, particulars for making nonagricultural land, particulars of conversion of tax for agricultural land into nonagricultural land, particulars of development charge of other Area Development Authorities, particulars of estimated costs for development of entire area of the Authority, particulars of benefits of possibility of development and development process possible development works, proposal for planning of development, nature of construction, density of population and rate of increase thereof and particulars of development charge for the area of AUDA approved by the Government has been taken into consideration. It is hereby notified for public at large that if any person has any objections/suggestions he can send the same in writing in three copies to the office of the Hajira Area Development Authority within a period of three months except the holidays. Hajira Area Development Authority will take into consideration such objections / suggestions pertaining to the draft development charge before obtaining approval from the Government as per the Rules. The arrangement has been made with regard to reasons and explanation for draft development charge.

Address of the office
Hajira Area Development Authority
A-5, Multi-storied Building,
Nanpura, SURAT-395 001.

Vinay Vyas,
Chief Executive Officer,
Hajira Area Development Authority, Surat.

SCHEDULE - A.

Particulars of the proposed development charges for the Hazira Development Authority.

A. - On the land of (Rs. per hector)

Sr.No. Purpose of use Whole HADA area.

1. Residential. 45000
2. Commercial 50000
3. Industrial 50000
4. Other uses 40000

B. - Building (Construction Area) (Rs. per sq.meter)

Sr. No. Purpose of use HADA
area(complete)

1. Residential 13/-
2. Commercial 15/-
3. Industrial 15/-
4. Other uses (Misc.) 12/-

Surat, 27th September, 1989.

23. After publication of First notification dated 21-8-1989 the authority thought it over and considered the necessity to give out necessary particulars required under Rule 50 of the Rules. Hence second notification was published on 29-9-1989 but no grounds and reasons have been shown for carrying out the various rates for different areas and uses. Only a list has been appended to it showing Rs.50,000/- per hector for industrial purposes. Similarly, for residential purpose 45,000/- per hector, for commercial purpose Rs.50,000/- per hector and other miscellaneous use Rs. 40,000/- and flat rate of Rs.15/per sq. meter to build construction for industrial and commercial purposes and Rs. 12/- per sq. meter for miscellaneous purpose, while for residential purpose Rs.13/-. It is mentioned in the notification that the list Schedule - N appended to it is for different areas for the purpose of determining the proposed development rates for different purposes, the sales/valuation of HADA area particulars of nonagricultural lands, the particulars of conversion charges for making nonagricultural lands. Admittedly the HADA authority was not authorized or entitled to make nonagricultural charge as the land was not being for agriculture purposes and the State Government has given the land free from nonagricultural conversion charges. The estimated costs of whole of the planning authority, particulars relating to the development possibility and development process, possible development, nature of construction, population thickness and its rates increased, rates determined by the Government for HADA

area have been taken into consideration. Thus, in my opinion, no ground and reason has been shown in this notification and no reason has been made out in this notification also for levy of maximum rate of development charge prescribed by the first and second proviso to Section 100 (2) of the Act. The notifications dated 21-8-1989 and 29-9-1989 are illegal and are liable to quashed and set aside. As such, development charge is not levied in strict procedure provided by the Statute. In this connection, the Apex Court has laid down a rule in the case A.K. Roy & Another Vs. State of Punjab and others, reported in 1986 (4) SCC 326, wherein it has been held as under :

When a power is given to do a certain thing in certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the legislature in enacting Section 20 (1) was to confer a power on the authority specified therein which power had to be exercised in the manner provided and not otherwise."

Similarly, in the case of Municipal Council Kharai & another Vs. Kamal Kumar & another, reported in AIR 1965 SC 1321, the Apex Court has held that under Article 265 of the Constitution no tax shall be levied except by authority of law. This clearly implies that the procedure for imposing the liability to pay a tax has to be strictly complied with. Where it is not so complied with the liability to pay the tax cannot be said to be according to law. On this ground also development charge levied by the authority is unreasonable and violative of the procedure prescribed by the Statute.

24. Now, let us examine the contention of the learned Advocate General that according to the provisions of Section 101 of the Act every person intending to carry out development area, change in land or building for which permission is required under the provisions of the Act. Whether he has applied for such permission or not, whether he has carried out such development or to commence to carry out development, has to apply to the authority concerned within time and manner prescribed thereof for the assessment of development charge and Section 26 of the Act provides that unless he pays the development charge and scrutiny fee leviable under this Act, the certificate is granted, no development can be carried out after the proposed draft development plan, and the contention of the learned counsel for the petitioner that development charge cannot be levied with

retrospective effect.

The Act presupposes that rates of development charge are already in existence either prescribed by Rules or Regulation or otherwise and those rates of development charges have already been approved by the State Government, hence as soon as draft development plan is submitted to the State Government for sanction, no person can carry out development over or in the land or building unless a certificate is granted by the authority that the person intending to carry out development in development area has paid development charge and scrutiny fee prescribed in accordance with the provisions of Section 99 and 100 of the Act. In the present case, admittedly there was no rate of development charge prescribed by rules or regulation and approved by the State Government in existence at the time when the development of the land and building was carried out by the petitioners. The petitioners started raising of boundary walls of the unit, the Panchayat of Mora restrained the petitioners from doing so without permission. Hence the petitioners sought for permission from Panchayat Mora and that was granted. The petitioner also sought for permission from Area Development Authority. That authority replied by the letter dated 15-2-1990 that there is no rate prescribed by the authority and approved by the State Government in existence as the draft development plan has not yet been submitted to the Government. Hence, the application of the petitioners for permission of development was not entertained. As such, there is no approved rate of development charge prescribed under the Rules or Regulations nor draft development plan was in existence. Subsequently, draft development plan was submitted by the authority to the State Government along with the list of proposed rates of development charge appended thereto and proposed rates were published in the notification dated 29-9-1989 inviting the suggestions from the person concerned u/s 99 of the Act read with Rule 50 of the Rules. Regulation prescribing the different rates of development charge and draft development plan were finally approved by the State Government on 7-5-1994 with effect from 8-6-1994. Though the State Government approved the proposal of development charge by the letter dated 21-12-1991 addressed to HADA. The HADA in its meeting held on 31-1-1992 decided to implement levy and imposition of development charge, the decision for imposition of development charge was published in Notification on 4-2-1992. The authority u/s 99 and 100 of the Act only after the previous sanction of the State Government, can levy development charge in accordance

with the procedure laid down therefor. The State Government has sanctioned different rates of development charge mentioned in the regulation. The State Government gave sanction for draft development plan and Regulations prescribing the different rates of development charge on 7-5-1994 with effect from 8-6-1994. Unless the proposed rates of development charge are approved by the State Government, what amount should be levied as development charge, neither in the Act nor in Rules the authority has not been empowered to levy development charge from the time when there was no rate prescribed by the authority nor it was sanctioned previously by the State Government. As such, unless the authority is empowered by the legislature in the Act to levy development charge with retrospective effect, the authority is incompetent to charge with retrospective effect. In this respect, the Supreme Court has laid down the rule of law in the case the Regional Transport Officer Chittoor etc. Vs. Associated Transport, Madras (P) Ltd. & Others reported in AIR 1980 SC 1872, wherein it has been held as under :

"The legislature has no doubt a plenary power in the matter of enactment of Statutes and can itself make retrospective laws subject, of course, to the constitutional limitations, but it is Trite law that a delegate cannot exercise the same powers unless there is special conferment thereof to be spelled out from the express words of the delegation or by compelling implication. In the instant case the power u/s 4 (1) does not indicate either alternatives. The mere fact that the rules framed had to be placed on the table of the legislature was not enough, in the absence of a wider power in the section, to enable the State Government to make retrospective rules. The whole purpose of laying on the table of the legislature the rules framed by the State Government is different.

"It is, therefore, plain that the authority of the State Government, under the delegation does not empower it to make retrospective Rules."

25. Further by Amendment & Validation Act (the Gujarat Act, No. 3 of 1995 which was published on 6-4-1995 with effect from 11-1-1995 says that any regulation purported to have been made before commencement of this Act appropriate authority will be deemed to have power to levy sanctioning fee and for permission of development shall be and shall be deemed always to have been validly made under the principal Act

as amended by this Act in force at all material time when such regulation was made. Section 13 (1) of the Gujarat Act No. 3 of 1995 lays down as under :

"13 (1) Notwithstanding anything contained in any judgment, decree or order of any Court or any other authority -

(a) any regulation made or purported to have been made before the commencement of this Act by any appropriate authority under the principal Act for levy of scrutiny fees for scrutiny of document submitted to the appropriate authority for permission for development shall be and shall be deemed always to have been validly made under the principal Act as amended by this Act as if the principal Act as amended by this Act had been in force at all material times when such regulation was made; and

(b) any scrutiny fees for scrutiny of documents submitted to the appropriate authority for permission for development, levied or levied and collected or purported to have been levied or levied and collected under any such regulation before the commencement of this Act, shall be and shall be deemed always to have been validly levied or levied and collected.

x x x x x "

26. Meaning thereby regulation will be deemed to have been made from the date of enforcement of the regulation it cannot be presumed that the Regulation will be deemed in force from the date when the principal Act came into force in 1976. Thus, Amendment and Validation Act also does not give powers to the Authority to levy development charge even before the commencement of Regulation wherein the provision for levy of development charge and levy of scrutiny fee is made.

In view of the decisions above Area Development Authority is completely incompetent to levy development charge with retrospective effect as such levy of development charge with retrospective effect not empowered by the legislature is illegal, bad, void and not sustainable in the eye of law and liable to be struck down.

27. Development Charge and Scrutiny Fee.

Previously scrutiny fee was known as development fee, Levy and collection of that fee under the Regulation was challenged in this Court. This Court declared that the Regulations under which the area development authority was empowered to levy and collection of the development fee were ultra vires under the provisions of the Act as under the Act the area development authority was not expressly and specifically empowered to levy and collection of that development fee and area development authority framed the Regulations in which there was provision for levy and collection of development fee. The matter reached upto the Supreme Court. The Supreme Court upheld the view of this Court and held in the case Ahmedabad Urban Development Authority Vs. Sharad Kumar Jayantikumar Pasawalla, reported in AIR 1992 SC 2038 that the imposition of development fee by framing the impugned Regulation was wholly unauthorized and as such illegal and void. In a fiscal matter it will not be proper to hold that even in the absence of express permission, a delegated authority can impose tax or fee, whatever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one should look fairly to the language used. The delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intend or the concept of incidental and ancillary powers in the matter of exercise of fiscal power. The Government of Gujarat having failed to levy and collect development fee even after approach before the highest Court of country passed the Amendment & Validation Act (Gujarat Act NO. 3 of 1995) amending the principal Act which was published in the Government of Gujarat Gazette Extra Ordinary on 6th April, 1995 which is known as Gujarat Town Planning and Urban Development (Amendment & Validation) Act, 1995 wherein several amendment i.e. Sections 7, 9, 23, 26, 27, 28, 29, 34, 49, 91 and 119 of the Act and certain provisions have been added making the provision of the Gujarat Act No. 3 1995 in operation with effect from 11-1-1995. By the amendment the AUDA has been authorized to levy and collect development charge and amendments have been made in the principal Act as these amendments were also already in existence in the principal Act.

28. Development charge is nothing but fee for carrying out development charge in land and building as stated above as defined u/s 2 (viii) of the Act. It is a fee for permission to make development in the land or

building. The development charge is levied and collected for execution of work of public utility in connection with the supply of water, disposal of sewerage and provisions of services and other amenities as defined in Section 2 (ii) of the Act, electric supply, street lights, roads etc. While, scrutiny fee is levied and collected for scrutiny of documents submitted to the appropriate authority for permission of development as may be prescribed by the Regulations. Both fees and taxes are compulsory exaction of money from individuals by public authority. There is no general difference between a tax and a fee but Tax is collected to be spent for general public purpose and it forms the part of revenue. No tax payee can claim any special facility for this purpose. On the other hand, fee is levied and collected for the benefit, amenities and special service to be rendered to the fee payer. It does not form part of revenue. Thus, there is correlation between fee and cost of the amenities, benefits and special services to be rendered to the payer of fee. Levy of excessive fee is considered to be disproportionate, irrational and unreasonable. Though no strict and mathematical assessment is considered but in case the cost of facility or amenity is about Rs.100/- and if Rs.10,000/- are charged as fee than such fee would be rendered as illegal being unreasonable, disproportionate and irrational that is why the cost of services, facilities, amenities or special service is estimated and fee is levied in the manner prescribed therefor. In this connection, I may point out that the Supreme Court has drawn distinction between tax and fee in catena of cases. Following are some of them :

(i) Ratilal Panachand Gandhi Vs. State of Bombay reported 1954 SCR 1055 = AIR 1954 SC 388, wherein it has been held as under :

Fees are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded.

Thus in fees there is always an element of "quid pro quo" which is absent in tax. It may not be possible to prove in every case that the fees that are collected by the Government approximate to the expenses that are incurred by it in rendering any particular kind of services or in performing any particular work for the benefit of certain individuals. But in order that the collections made by the Government can rank as fees, there

must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services.

Thus two elements are essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly and in the second place, the amount collected must be earmarked to meet the expenses of rendering these services must not go to the general revenue of the State to be spent for general public purpose.

Too much stress should not be laid down on the presence or absence of what has been called "coercive" element. It is not correct to say that as distinguished from taxation which is compulsory payment, the payment of fee is always voluntary, it being a matter of choice with individuals either to accept the service or not for which fees are to be paid.

(ii) Sri Jagannath Ramanuj Das & Another Vs. State of Orissa & Another, reported in AIR 1954 SC 400, relevant portion of which reads as under :

"As has been pointed out in Madra Appeal, there is no generic difference between a tax and a fee and both are different forms in which the taxing power of a State manifests itself. Our constitution, however, has made a distinction between a tax and a fee for legislative purposes and while there are various entries in the three lists with regard to various forms of taxation, there is an entry at the end of each one of these lists as regards fees which could be levied in respect of every one of the matters that are included therein.

A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purpose, the payment of which is enforced by law. But the essential thing in a tax is that the imposition is made for public purpose to meet the general expenses of the State without reference to any special benefit to be conferred upon the tax payer of the tax. The taxes collected are all merged in the general revenue of the State to be applied for general public purpose. Thus tax is a common

burden and the only return which the tax payer gets is the participation in the common benefits of the State. Fees, on the other hand, are payments primarily in the public interest but for some special service rendered or some special work done for the benefit of those from whom payment are demanded.

Thus, in fees there is always an element of quid pro quo which is absent in a tax. Two elements are thus essential in order that a payment may be regarded as a fee. In the first place, it must be levied in consideration of certain services which the individuals accepted either willingly or unwillingly. But this by itself is not enough to make the imposition a fee, if the payments demanded for rendering of such services are not set apart or specially appropriated for that purpose but are merged in the general revenue of the State to be spent for general public purpose."

(iii) This fine distinction has been described by the Supreme Court in the case *The Indian Mica & Micanite Industries Ltd. Vs. State of Bihar*, reported in AIR 1971 SC 1182, wherein the Supreme Court has held as under:

"The nature of a fee again came up for consideration of this Court in *Himgir Rampur Coal Co. Ltd. Vs. The State of Orissa*, reported in 1961 (2) SCR 537

= AIR 1961 SC 459. Therein this Court observed that although there can be no generic difference between a tax and a fee since both are compulsory exaction of money by public authorities, there is this distinction between them that whereas a tax is imposed for public purposes and requires no consideration to support it, a fee is levied essentially for services rendered and there must be an element of quid pro quo between the person who pays it and the public authority that imposes. While a tax invariably goes into the consolidated fund, a fee is earmarked for the special services in a fund created for the purpose."

(iv) The Supreme Court has reiterated the principle of quid pro quo in a series of cases that the object of levy and collection of fee must be and large a quid pro quo for the services rendered. As such, there must be correlation between fee levied and the services rendered.

Where the levy of fee is wholly disproportionate to the services rendered then levy of fee becomes invalid and arbitrary as it has been held by the Apex Court in the case of The Indian Mica and Micinite Industries Ltd. Vs.. State of Bihar reported in 1971 SC 1182, the relevant portion of the judgment is extracted, as under :

"The power of any legislature to levy fees is conditional by the fact that it must be by and large a quid pro quo for the services rendered. If a levy purporting to be a fee is found to be an exaction without doing any service or if it is found that the levy is wholly disproportionate to the services rendered then the levy becomes invalid."

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"Now coming to the fees, a "fee" is generally defined to be charged for special service rendered to individuals by some Governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the services, though in many cases the costs are arbitrarily assessed."

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"If as we hold, a fee is required as sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services. . The same view was reiterated by this Court in the case of Mahant Sri Jagannath Ramanuj DAs Vs. State of Orissa, reported in 1954 SCR 1046 = AIR 1954 SC 400 and in Rati Lal Panachand Gandhi Vs. State of Bombay, reported in 1954 SCR 1055 = AIR 1954 SC 388."

29. Correlation of fee and services rendered and material therefor.

Now, let us see what services have been rendered and what is the cost or estimate of those service rendered or purported to be rendered in the present cases and what is relation of levy of fee with services or amenities rendered or purported to be rendered. In Spl. C.A. No. 9722/93, it is asserted "The petitioners submit that the 3rd respondent authority has no machinery for rendering any assistance/service by the planned

development in the area and in those circumstances apart from there being no even broad relationship of fees and services as a matter of fact there is no service whatsoever even proposed by the authority." Learned counsel for the petitioner submitted that no services have been rendered to the petitioners. The petitioners constructed roads. They made projects to supply of electricity, disposal of sewerage affluent discharge, water supply, street lights etc. for which the authority was under the statutory function to provide the same. But no service was rendered by the authority to the petitioners. The learned Advocate General could not refute that any services were rendered. He only submitted that for the scrutiny of documents some staff must have been engaged for which scrutiny fee is levied. In the counter affidavit filed on behalf of the respondents no. 1, 2, and 4 in Spl. C.A. No. 9722/93 the authority has not given out any material as to what services were rendered to the petitioners in respect of the fees (development charge & scrutiny fee) levied by the authority even it is not stated what is the machinery for carrying out execution of work in connection with supply of water, disposal of sewerage, lighting, roads etc. and for scrutiny of documents for developments. Such material is expected to be with the authority but authority did not opt to narrate in the counter affidavit or at least could have produced before this Court during the course of arguments that continued for few days. It is only stated in the counter affidavit. "I submit that as against the levy of scrutiny fees reciprocal services in the form of documents submitted are rendered, so is the case with premium fees whereby in cases where development is carried out and if the development is found to be in consonance with the regulations the same is regularized." In other paragraph it is stated, " I deny that there are no services even contemplated by the authority in consideration of scrutiny fee, security, deposit and the premium.

30. So far as development charge is concerned the petitioners specifically state in ground (h) of Spl. C.A. No. 9626/93, "the appropriate authority is expected to provide infrastructural facilities for which they may be permitted to levy development charges. In the instant case, there are no infrastructural facility or any other facility of any nature whatsoever is provided, contemplated or stipulated and on this count alone the impugned imposition of levy and demands on account of development charges is already impermissible." In reply to this assertion of the petitioners in the petition, in the counter affidavit filed on behalf of the

respondents no. 1, 2, and 4 in Spl. C.A. No. 9626/93 it is stated, "with regard to ground (h) I reiterate what is stated in reply to ground (f) above." In reply to ground (f) it is stated, "with regard to ground (f) I submit that the development charge are neither taxes or fees. I submit that upon preparation of the development plan the various proposals in the development plan like proposed road as well as areas reserved for public purposes as well as in view of the possible benefits under the development plans, the value of the land increases without any effort on the part of the owner of the land. I submit that merely by declaration of the inclusion of an area in the development plan the value of the land increases. I submit that it is towards this unearned increase in value that the development charges are to be paid and the same are to be paid only owner upon the development activities being commenced. I submit that it is not necessary to provide infrastructural facilities and amenities against payment of development charge." Thus, it is stated that the authority is not required to provide any facilities or amenities as against development charge levied by the authority. The Supreme Court has laid down the principle for levy of fee that there must be corelationship between the fee levied and the services rendered and that fee should be spent only for the purpose of the imposition and should not form part of general revenue. It is the duty of the authority to show material before the Court what services are to be rendered in reciprocal of levy of fee.

(i) In the case the Chief Commissioner, Delhi and Another Vs. the Delhi Cloths and General Mills Co. Ltd., & Others, reported in 1978 (2) SCC 367, the Apex Court has laid down, as under :

"The main point which arises for consideration in this case is as to whether or the fee charged under the notification issued by the Chief Commissioner was a legal impost justified by the provisions of the constitution. It is well settled that a fee in order to see a legal fee, must satisfy two conditions : - (i) there must be an element of quid pro quo that is to say, the authority levying the fee must render some service for the fee levied however remote the services may be; (ii) that the fee realized must be spent for the purpose of the imposition and should not form part of the general revenues of the State."

(ii) In the case of India Mica and Micanite Industries Ltd. Vs. the State of Bihar, reported in AIR 1971 SC 1182, wherein it has been held as under :

"Further in this case, the State which was in a position to place material before the Court to show what services have been rendered by it to the appellant and other similar licensees, the costs or at any rate the probable costs that can be said to have been incurred for rendering those services and the amount realized as fee has failed to do so. On the side of the appellant, it is alleged that a State is collecting huge amount as fees and that it is rendering little or no services in return. The corelationship between the services rendered and the fee levied is essentially a question of fact. Prima facie, the levy appears to be excessive even if the State can be said to be rendering some services to the licensees. The State ought to be in possession of the material from which the corelationship between the levy and the services rendered can be established at least in general way. But the State has not chosen to place those materials before the Court. Therefore, the levy under the impugned Rules cannot be justified."

(iii) The Apex Court in the case The Government of Andhra Pradesh & Another Vs. Hindustan Machine Tools Ltd. reported in 1975 (2) SCC 274, has held, that :

But there is a broader ground on which the levy of permission fee must be struck down. Fees are a sort of return or consideration for services rendered which makes it necessary that should be an element of quid pro quo in the imposition of a tax. There has to be a corelationship between the fee levied by an authority and the services rendered by it to the person who is required to pay a fee. (Commissioner, Hindu Religious Endowments Vs. Sri Lakshmindra Thirtha Swamiar, reported in AIR 1954 SC 282).

31. It is evidently clear that it is well settled proposition of law that it must be shown by the authority that levy of fee has a reasonable corelationship with the services rendered or facility given to the payer. Fees are payments primarily in public interest but for the some special services are rendered or facilities / amenities are given or special work is done for the benefits of those from whom payments are demanded. In

fees there is an element of quid pro quo which is absent in a tax. If a levy purporting to be fee is found to be exaction without doing any service to the payer of the fee or if it is found that levy is wholly disproportionate to the services rendered then the levy becomes invalid. In the absence of corelationship of the fee to the expenses incurred by the authority in rendering services, levy of fee is illegal and invalid. In the case in hand, the authority has not chosen to produce any material either in the counter affidavit or in the court during the course of arguments that the authority has any machinery to provide any special service to the petitioners from whom scrutiny fee, security deposit, premium is demanded. In respect of levy of development charge the authority stated that they are not required to provide any special facility or amenities as against levy of development charge. In the absence of corelationship of levy of development charge and scrutiny fee I am constrained to hold that levy of development charge on the basis of the notifications dated 21-8-1989 and 29-9-1989 published in the official gazette u/s 99 of the Act and concerned regulations and the levy of development charge, premium and scrutiny fee contemplated under the provisions of Regulations are bad, illegal, void and ultra vires. On this score also those notifications and imposition of development charge, scrutiny fee and premium, deserve to be struck down.

32. CLASSIFICATION & REMEDY.

As it has been held that development charge leviable at the maximum flat rate prescribed therefor in the notifications and regulations published by the authority without any ground or reasons and without classification is impermissible. In the similar manner, without any classification maximum flat rate for charging scrutiny fee is also impermissible, unreasonable, arbitrary, irrational and disproportionate. Classifications made in the regulations is only residential and nonresidential. Such classification is not sufficient. It should be classified in different categories which should be subject to different rates of levy of scrutiny fee and development charge with reference to the locations, situation, use of land and costs of services rendered. If assessment of scrutiny fee or development charge is improper, illegal, arbitrary and disproportionate or excessive, there should be remedy available for the aggrieved person. Though the Act has provided constitution of Tribunal where an appeal lies. But the counter affidavit is silent regarding existence of the Tribunal. In this respect learned counsel for the

petitioner stated that no Tribunal has been constituted as provided u/s 102 of the Act. As such, the remedy of an appeal or revision against the illegal or arbitrary assessment of development charge or scrutiny fee is not available.

33. It is a well settled principle of law that uniform or flat rate of tax irrespective of various rational considerations, without any rational classification is violative of Article 14 of the Constitution of India. Without giving any remedy to the assessee against the assessment of fee or tax is arbitrary and violative of Article 14 of the Constitution of India. The Division Bench of Bombay High Court in the case of Rajat Mahal Cooperative Housing Society Ltd. Vs. State of Maharashtra & Others, reported in AIR 1980 Bombay 358, wherein it has been held, as under :

"If, therefore, the Act to treat unequals as equals and impose an uniform or flat tax irrespective of the various rational considerations which ought to enter a tax structure, the Act and the tax obviously offend the provisions of Article 14."

Similarly, the Apex Court in the case of M/s. Devi Das Gopal Krishnan Vs. State of Punjab and others, reported in AIR 1967 SC 1895, has held, as under :

"It is the duty of the Court to strike down without any hesitation any arbitrary power conferred on executive by the legislature."

The minimum we expect of the legislature is to lay down in the Act conferring such a power of fixation of rates clear legislature also or guidelines in that regard. As the Act did not prescribe any such policy, it must be held that Section 5 of the said Act, as it stated before the amendment, was void."

In the same way, the Apex Court in the case the State of Andhra Pradesh & Another Vs. Nalla Raja Reddy & Others, reported in AIR 1967 SC 1458, has held as follows:

"Further, the whole imposition of assessment was left to the arbitrary discretion of the officers not named in the Act without giving any remedy to the assessee for questioning the correctness of

any of the important stages in the matter of assessment, such as ayacut, taram, rate or classification or even in regard to the calculation of the figures. Not only, the scheme of classification, as pointed out by us earlier, has no reasonable relation to the object sought to be achieved viz. fixation and rationalization of rates but the arbitrary power of assessment conferred under the Act enables the appropriate officers to make unreasonable discrimination between different persons and lands. The Act, therefore, clearly offends Article 14 of the Constitution."

The Apex Court in the case of Kunnathat Thathunni Moopil Nair etc. Vs. State of Kerala & Another, reported in AIR 1961 SC 552, has held, as under :

"The Act, thus proposes to impose a liability on land holding to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee, (2) there is no procedure for rectification of mistake committed by the Assessing Authority. (3) there is no procedure prescribed for obtaining the opinion of a superior Civil Court on the question of law as is generally found in all taxing status, and (4) no duty is casted upon the Assessing Authority to act judicially in the matter of assessment proceedings. Now is there any right of appeal provided to such assessee as may feel aggrieved by the order of assessment."

34. As stated above, the authority has levied development charge and scrutiny fee at the maximum flat rate without any reasonable classification and no remedy by way of appeal or revision is available to the fee payer against assessment of value for development charge which is arbitrary and irrational and violative of Article 14 of the Constitution.

35. As it has been held that development charge has been levied with retrospective effect is not authorised by the legislature. Similarly, scrutiny fee has also been levied with retrospective effect. Levy of scrutiny fee is permitted by the Act under the regulation and these regulations came into existence from the date of 7-5-1994 when the development plan along with the regulations was sanctioned by the State Government and made effective from 8-6-1994. The Amendment and

Validation Act also says u/s 13 of the Act No. 13 of 1995 that the regulations for levy of scrutiny fees for scrutiny of documents shall be deemed always to have been validly made, had been in force at all material times when such regulation is made. As such levy of scrutiny fee will be valid when such regulation came into operation. Meaning thereby legislature has not empowered the authority to levy scrutiny fee when the regulation prescribing levy of scrutiny fee was not in operation but the authority has levied scrutiny fee with retrospective effect not only from 1989 but also from the date of constitution of HADA. As such the authority is completely incompetent to charge scrutiny fee with retrospective effect. On this score also levy & collection of scrutiny fee is liable to be struck down.

36. PREMIUM.

According to Regulation 5.7 no deviation or departure from the approved plan shall be made without proper permission from concerned authority. According to Regulation 5.8 premium fee which is required to be paid if the development is though in accordance with the general development control Regulations but without prior permission or deviation of the granted development permission. In the case where the development has already been started or completed on any site on or after 21.8.89 and for which development permission in writing of the authority is not obtained, but where this development on a site may be in accordance with the provisions of these regulations, the "development permission" for such work on site without the prerequisite permission or development though in accordance with the regulations but in deviation of the granted "development permission" may be granted by the competent authority on the merits of each case for which fee is prescribed which follows as :-

"5.9 : Development though in accordance with the applicable Government Orders/Building Regulations/Bye-laws/Rules etc. but without prior permission or in deviation of the granted permission.

In the case, where development had already been started and completed on any site prior to for which necessary permission in writing of the concerned competent authority at the relevant time was not then obtained but where this development made on site is in accordance with the relevant rules, building regulations,

bye-laws etc. as framed by the local authority or the Government orders as in force at the relevant time, the "development permission" for such works on site without prerequisite permission or development though in accordance with the relevant rules, building regulations, bye-laws, Government orders as in force at the relevant time, but in deviation of the granted permission can be granted by the competent authority on merits of each case : for such development works, over and above such charges/fees as may be otherwise leviable, premium shall be charged as per rates prescribed under regulation 5.8.

Provided, however, that no such permission shall be given in respect of developments which are in violation of the development plan and town planning scheme proposal as in force."

"5.8 : Development through in accordance with the General Development Control Regulations but without prior permission or in deviation of the granted development permission.

In case where development has already been started or completed on any site or after 21.8.1989 and for which Development permission in writing of the Authority is not obtained, but where this development on a site may be in accordance with the provisions of those regulations, the "development permission" for such works or site without the prerequisite permission or development though in accordance with the regulations but in deviation of the granted "development permission" may be granted by the competent authority on the merits of each case. For such, developments works over and above such other charges/fees as may be otherwise leviable premium shall be charged as per following rates :

Sr. Type of Development Rate of premium as %
of the cost of development
carried out.

Residential Development
development other than
residential

1. Development in accordance with General Development Control Regulations started before obtaining written permission though applied for 1.0% 2.0%
2. Development though in accordance with the General Development Control Regulations, but not applied for. 1.5% 3.0%
3. Development though in accordance with the General Development Control Regulations, but in deviation of the granted development permission. 2.0% 4.0%
4. Brick kiln, Mining Carrying 23 paisde sq.mt. and all other plan land of portion of land in which development is made or has started.

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N O T E.

1. For Residential Development, minimum Rs.250/-.
2. For Development other than Residential, minimum premium will be Rs.1,000/-.
3. For Charitable trust relaxation in premium shall be made by Chief Executive Authority taking into consideration is merits purpose of trust, type of development etc. after recording reason thereof.
4. Norms for assessing cost of development carried out for different type of constructions shall be, as may be prescribed by the Authority from time to time.

37. Thus, the premium is penal fee if the development has already started and permission for development has not been obtained though the development is in accordance with the development plan and Regulations.

38. The main contention of the learned counsel for the petitioner in respect of levy of premium is that the

author ity is incompetent and not authorized in the principal Act even the Amendment and Validation Act does not authorise the authority to frame regulations imposing premium. It has no corelation for the ser vices rendered or to be rendered by the authority to the petitioners though the Amendment and Validation Act validates the Regulations but specific power must be conferred to the authority either by Principal Act or Amendment and Validation Act to form regulations for imposition of premium thus the regulations imposing premium are ultra vires and in violation of Statute. Moreover, they cannot be operative with retrospective effect.

39. I have considered carefully this contention of the learned counsel for the petitioner. The Apex Court in the case of AUDA Vs. Sharad Kumar Jayanti Kumar Pasawalla (supra), has held that the imposition of development fee by framing the impugned Regulations was wholly unauthorized and as such illegal and void. In the fiscal matter it will not be proper to hold that even in the absence of express provision, a delegated authority can impose tax or fee. Whenever there is compulsory exaction of any money, there should be specific provision for the same and there is no room for intendment. Nothing is to be read and nothing is to be implied and one should look fairly to the language used. The delegated authority must act strictly within the parameters of the authority delegated to it under the Act and it will not be proper to bring the theory of implied intent or the concept of incidental and ancilliary power in the matter of exercise of fiscal power.

40. Thus, in view of the rule laid down by the Supreme Court the delegated authority i.e. HADA is not competent or authorized to frame Regulations imposing any fee or tax which is compulsory exaction of money unless there is specific provision under the Act empowering the authority to frame regulations for imposition of suh tax or fee. Otherwise, it will be illegal, void and ultra vires of the Act. In the present case u/s 119 of the Act the authority is empowered to frame regulations only in respect of the items given out therein. But there is no item therein to frame regulation for imposition of premium, nor there has been given any power to the author ity in the Amendment and Validation Act to frame regulation for imposition of premium. Implied intend would not amount to justify levy of premium, merely, the Amendment and Validation Act validates the regulations wherein there is provision of levy of premium, in the absence of specific confernment of power to the authority by the Statute. Thus, imposition of premium prescribed

by Regulation is without authority of law. Moreover, there is no correlation of this premium and the services rendered in reciprocal basis and it can not operate with retrospective effect as regulations came into existence after sanction of the State Government on 7-5-1994 w.e.f. 8-6-1994. Thus, imposition of premium is without authority of law, illegal and ultra vires of the Statute. The prayer regarding security deposit has not been pressed by the learned counsel for the petitioners.

41. In view of the above discussion, both these petitions are liable to be allowed and the petitioners are also entitled to refund the amount deposited in this Court pursuant to the Courts order dated 26-10-1993.

42. Accordingly, both the petitions being Special Civil Applications No. 9626/93 and 9722/93 are allowed and the notifications published in the official gazette on 21-8-1989 and 29-9-1989 u/s 99 of the Gujarat Town Planning and Urban Development Act, 1976 in respect of proposed imposition of development charge and the notification dated 4-2-1992 approving the development charge by the State Government and demand notices dated 1-7-1992, 17-7-1992, 25-2-1993/9-3-1993 and the notification, if any, imposing levy of scrutiny fee, premium and Regulations 3.3, 5.3, 5.5, 5.7, 5.8 and 5.9 imposing scrutiny fee and premium, demand notice making demand account of scrutiny fee and premium, if any, are hereby quashed and struck down. The amount of Rs.1,00,00,000/- (Rupees one crore only) deposited by the petitioners pursuant to the court's order dated 26-10-1993 with the interest whatsoever accrued in this Court, shall be refunded to the petitioners forthwith with the interest whatsoever accrued to it.

So far as the amount of Rs. 4 lacs deposited by the petitioners is concerned, it is stated that the said amount of Rs. 4 lacs was deposited by the petitioners under the protest with the respondent HADA and as HADA has already been dissolved by the Government of Gujarat vide Notification dated 28-8-1997, the District Collector of District Surat, has been authorized to perform functions. As such, the petitioners are at liberty to move the District Collector of District Surat for refund of that amount of Rs.4 lacs along with the interest. In case, the petitioners apply for refund of that amount of Rs.4 lacs, the District Collector, District Surat will refund to the petitioners the amount of Rs.4 lacs at the earliest together with interest at the rate of 15% p.a. from the date of deposit till its realization, if such amount is already deposited.

Rule is made absolute to the aforesaid extend,
with no order as to costs.

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/JVSatwara/